

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy and
Program Coordination and Integration in Electric Utility
Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)
(QF Issues)

Order Instituting Rulemaking to Promote Consistency in
Methodology and Input Assumptions in Commission
Applications of Short-Run And Long-Run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)
(QF Issues)

**REPLY COMMENTS OF
INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE
PROPOSED DECISION ON FUTURE POLICY
AND PRICING FOR QUALIFYING FACILITIES**

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June 4, 2007

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Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) respectfully submits this reply to the opening comments submitted on May 25, 2007.

The opening comments reflect the unanimous view that the PD cannot be voted out as written and that further deliberation is required before that can happen. TURN notes a "plethora" of issues that remain unresolved, IEP identified 21 and the other parties combined add their own. These range from serious legal error, to clarification of the manner of determination of key pricing features, to implementation. IEP therefore agrees with TURN that a process is required to address these issues, suggesting workshops conducted by the Energy Division.

IEP does not agree with TURN, however, that what it calls "big money issues" (identified by it as energy and capacity payments) may be resolved separately from such a further process. The determination of payments, the manner in which payments are to be made, potential constraints on payments (such as collars and caps) and numerous other issues remain to be

determined and are critical to the reasonableness of any new payment scheme. They cannot reasonably be severed one from the other.

In addition to the need for further deliberation, IEP makes a small number of responses to specific observations of the parties that are necessary to clarify the record.

First, **Southern California Edison Company (SCE) is wrong to recommend the retroactive application of the PD to adjust prices made under existing Commission determinations of avoided cost.** Such Commission determinations constitute by definition avoided cost and are not rendered invalid by mere virtue of being updated or because they differ from some alternate determination of avoided cost as SCE may propose. This reality is particularly acute in this proceeding since:

- an estimate of avoided cost, by law, does not violate the PURPA requirement simply because it differs from an avoided cost determination made closer to the time of delivery. 18 CFR 292.304(b)(5).
- SCE's proposal, adopted by the PD, does not measure or reflect avoided cost at the time of delivery (IEP Opening Comments at 2; cf. 20 RT at 2971), making SCE's point disingenuous.
- SCE admits that its proposal does not comport with P.U. Code Section 390 and that a change of law would be required for it to be approved, contrary to the conclusion in the PD. IEP Opening Comments at 4.
- SCE's alternate "market based" determination of avoided cost, adopted by the PD, ignores the market abuses, among other flaws, detailed in IEP's testimony and is a meaningless basis for comparison anyway. *Id.* at 7.

Second, TURN's tirade on Qualifying Facility positions is unfair with respect to IEP.

IEP has not taken a position anywhere similar to that which TURN ascribes to "QFs" (without identification). IEP has long supported market-based pricing, including as long ago as AB 1890, where a properly functioning market referent exists for that purpose. The "inconvenient truth" that the NP-15 and SP-15 market referents used in the PD contain the certainty of market distortion based on utility withholding, among other flaws detailed in IEP's testimony, does not render IEP's opposition to the use of these referents as "infantile" or whatever other pejorative term TURN selects. Moreover, the plethora of implementational flaws in the proposed "market" approach that TURN itself identifies validates IEP's position in this proceeding. Determining now, as TURN apparently proposes, to move to a market mechanism is premature.

For all the reasons discussed in its testimony, its Opening Comments and above, the Commission cannot reasonably conclude that the PD is in a condition to be approved. All the parties agree that numerous questions remain to be resolved before such a sea change in avoided cost implementation may occur.

Respectfully submitted,



Dated: June 4, 2007

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Certificate of Service

I hereby certify that I have this day served a copy of “Reply Comments Of Independent Energy Producers Association On The Proposed Decision On Future Policy And Pricing For Qualifying Facilities” on all known parties to R.04-04-025 and R.04-04-003 (List QF Issues) by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on June 4, 2007 at Sacramento, California

_____/s/____

Eric Janssen

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R.04-04-003/R.04-04-025 (List
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June 4, 2007

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